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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/081,273   | 02/21/2002  | Edward C. Carman JR. | 843P010811-US (PAR) | 9776             |
| 2512   | 7590        | 03/17/2006           | EXAMINER            |                  |
| PERMAN & GREEN<br>425 POST ROAD<br>FAIRFIELD, CT 06824 |             |                      | PHAM, HUONG Q       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3764                |                  |
| DATE MAILED: 03/17/2006                                |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/081,273

Applicant(s)

CARMAN ET AL.

Examiner

Huong Q. Pham

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/27/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-15,17-20,23-31,33-41 and 44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-15,17-20,23-31,33-41 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>note attached drawings</u> .           |

## DETAILED ACTION

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

“raised contour” (claims 1, 34) lacks proper antecedent basis in the specification. It is unclear what surface or contour is this recited “raised contour”.

The disclosure is objected to under 37 CFR 1.71, as being incomprehensible.

The following items are not understood: On page 8, the specification defines the pitch of the helix 5 as “the distance between adjacent turns of the helix measured along a line parallel to its axis 11, decreases, as the helix extends rearward to end 9”. However, the distance between turns is arbitrary. The distance between turns depends on how one would decide how or where to define or begin a turn. It is not clear how the pitch decreases from forward to rearward when the radius of curvature of the helix decreases from rearward to forward (claims 8, 24, 37).

Applicant is required to submit an amendment which clarifies the disclosure. Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

Claims 33, 40- 41, 44 are objected because:

As for claim 33, " said brace" , " said grip" lack proper antecedent basis . The " said brace " of line 9 would appear to be the part of the device that is attached to the grip and not the device as a whole as recited in line 1. The grip is inferentially recited in the preamble, and is not part of the claimed combination. It is unclear how much weight can be given " said brace attached to said grip" since the grip is part of the hand held tool and not part of the claimed brace.

As for claims 41, 44, " said second axis" lack proper antecedent basis. Also, there is no first axis recited. Therefore, the recited " second axis " and " third axis" render the scope of the claims unclear.

As for claims 40, 41, 44, there is no antecedent basis for " the device" ( line 3 ).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 8, 24, 34, 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As for claims 1, 34, " raised contour" lacks proper antecedent basis in the specification. It is unclear what surface or

contour is this recited "raised contour". As for claims 8, 24, 37, it is not clear how the pitch decreases from forward to rearward when the radius of curvature of the helix decreases from rearward to forward. On page 8, the specification defines the pitch of the helix 5 as "the distance between adjacent turns of the helix measured along a line parallel to its axis 11, decreases, as the helix extends rearward to end 9". However, the distance between turns is arbitrary. The distance between turns depends on how one would decide how or where to define or begin a turn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, 11-14, 24, 27-30, 34, 37, 40-41, 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As for claims 1, 34. It is unclear what surface or contour is the recited "raised contour". Also, it is not clear how the flat seat portion can also have a "raised contour". As for claims 8, 24, 37, it is not clear how the pitch decreases from forward to rearward when the radius of curvature of the helix decreases from rearward to forward (on page 8, the specification defines the pitch of the helix 5 as "the distance between adjacent turns of the helix measured along a line parallel to its axis 11, decreases, as the helix extends rearward to end 9". However, the distance between turns is arbitrary. The distance between turns depends on how one would decide how or where to define or begin a turn). As for claims 11-14, 27-30, 40-41, 44, it is unclear how the brace is oriented "

within" the device ( note that in the drawing, the brace 5 extends rearwardly from the seat) .

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- 3, 6- 15, 17- 20, 23- 31, 33- 41, 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Stephens ( 5,331,989).

As for claim 1, Stephens shows every claimed feature of claim 1 including a forward end, an attachment post 11 ( figure 5) having a first longitudinal axis, a grip 17 having a second longitudinal axis fixed to the attachment post 11 and extending rearward therefrom, with the second axis extending transverse to said first axis, a substantially flat seat portion 27 ( note the attached figure 2 of Stephens, and note that a part of the surface of the seat 27 is substantially flat) fixed to the grip and extending rearward therefrom with a raised contour from forward to rearward facing the arm, and a brace 65 ( note figure 5) constructed "substantially" in the form of a helix, the helix circumscribing an open space to accommodate the arm of the user, the brace 65 fixed to seat 27 and extending rearward therefrom, wherein the brace and the seat provide individual supporting surface portions which are capable of bearing against the arm along the extent of the brace in response to movement of the arm within the brace, the

arm movement is capable of being responsive to an external force applied to the brace in any direction, and wherein the individual supporting surface portions occur in separate, parallel planes, oriented substantially transverse to a longitudinal axis of the brace, and the transverse, parallel planes are displaced longitudinally on the brace and the seat. Note that the attachment post 11 is constructed with a coupling at means ( figure 14) at forward end capable for attachment to a tool or appliance(the examiner interpret the foot member 14 is a tool). Note that Figures 4,5 show the brace 65 with a top edge higher than a lower edge, and therefore the brace 65 is constructed “ substantially” in the form of a helix as recited. One tracing the top edge of the brace 65nfrom the lower edge in figures 4, 5 would follow a helical path to the top edge of brace 65. This would broadly comprehend “ substantially” in the form of a helix. Note that to any extent that applicant ‘s seat portion 4 is flat and having “raised contour” (as shown in applicant’s figure 1a), so is the seat portion ( note attached drawing) of Stephens. As for claim 2, to any extent that applicant open space is conical, so is the open space circumscribed by the brace 65 of Stephen ( note figure 5, from point 27 to points 63, 73) . As for claim 3, note that the attachment post 11, the grip 17, the seat 27, and the brace 65 are integrally formed . As for claim 6, note that the first and second axes intersect in an acute angle. As for claim 7, note that the second axis and the plane of the seat 27 intersect at an angle which is supplementary to the acute angle. As for claim 8, note that the pitch of the helix decreases from forward to rearward. As for claim 9, note that the radius of curvature of the helix increases from forward to rearward 9 ( note attached drawings) . As for claim 10, note that the brace 65 has a substantially

straight portion at its distal end. As for claim 11, note that the brace 65 is oriented with respect to the other elements of the device so that the arm is circumscribed on at least three sides. As for claims 12-14, note that the brace 65 is oriented with respect to the other elements of the device, and when a child or person with a small forearm uses the brace, the wrist is capable of being free to flex as recited. As for claim 15, note the appliance 30 is releasably secured to the attachment post by means of a coupling (figure 14). As for claim 17, note that a portion of the surface of the seat 27 is "substantially" flat from forward to rearward.. As for claims 18- 20, 23- 31, 33- 41, 44, note the comments relative to the above claims.

### ***Response to Arguments***

Applicant's arguments filed on 12/27/ 2005 have been fully considered but they are not persuasive. Note the comments relative to the claims above.

In response to applicant 's argument on page 22 that " The figures are clearly drawn in a perspective view looking slightly upward in figures 2 and 5 and slightly downward in figures 3 and 4.", note that on column 2, Stephens mentioned that figures 2-5 are elevational views ( not perspective views). Therefore these views are at 90 degree side views of the device. There is no slight up angle or slight down angle views. If these drawings were drawn at angle as applicant suggests, Stephens would have referred to these drawings as perspective views.

In response to applicant 's argument on page 23 that " the word helix or the word spiral is not used anywhere", note that the examiner relies on the teaching from



the whole disclosure of the patent to Stephens, which includes the specification, the drawings, and the claims. Note that the reference does not have to exactly mention the word "helix" or "spiral", figures 2-5 clearly teach this helix ( note attached drawings).

On page 18, applicant argues that " The heel engaging portion 27 is shown in figure 5 .....is not flat, but concave from side to side. It is described as a channel for aligning the arm. It is therefore not flat.... There is no room for the wrist to flex from side to side. " The examiner does not agree. It is not clear how much weight can be given to the argument that the heel engaging portion 27 of Stephens has " no room for the wrist to flex from side to side' since the claims would appear to require just the opposite. Claim 1 requires the brace and seat to " provide a series of individual supporting surface portions for bearing against the arm along the extent of the brace in response to movement of the arm within the brace" . If the brace and seat has surface to bear against the arm in response to movement of the arm within the brace, how is there room to allow the wrist to flex from side to side? The supporting surface portions bear against the arm to support the arm to not allow it freedom or room to move side to side within the brace. Note the attached drawing which shows how the examiner interprets the seat portion as a narrow extending area, therefore the seat portion is "substantially" flat as recited. Also, note in figure 1 that , when a child or a person with a small forearm or wrist uses the device , the wrist is capable of flexing up and down , and from the left to the right . Moreover, applicant's seat portion isn't flat either. It has a raised contour. It is not clear how applicant's flat and raised contour is different from Stephens flat and

raised contour. The flat seat portion of Stephens extends along a plane defined by the line A-A as noted in figure 5 of the attached drawings.

Applicant argues on page 17 that " a fixed foot member of a cane is not a tool or appliance....There is no mentioned that socket 45 provides a releasable attachment for a tool or appliance." Note in figure 14, the examiner interprets the foot member 14 is a tool , which is releasably secured to post 11 by means of a coupling ( the socket 45 forms the recited coupling means).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on ( 571) 272 - 4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 13, 2006

A handwritten signature in black ink, appearing to read 'Danton D. DeMille', with a stylized flourish at the end.

**Danton D. DeMille**  
**Primary Examiner**



